

REMARKS

At the time of the Third Office Action dated November 10, 2010, claims 24-38 were pending and rejected in this application. By this Supplemental Amendment, Applicants have returned independent claims 24, 29, and 34 to their original form. Newly added claims 39, 41, and 43 correspond to previously-presented claims 28, 33, and 38. Newly added claims 40, 42, and 44 have also been presented, and Applicants respectfully submit that the present Amendment does not generate any new matter issue.

CLAIMS 24-38 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON NAGASAWA, U.S. PATENT PUBLICATION NO. 2002/0116234 (HEREINAFTER NAGASAWA), IN VIEW OF BETGE-BREZETZ ET AL., U.S. PATENT PUBLICATION NO. 2005/0177629 (HEREINAFTER BETGE-BREZETZ)

On pages 3-5 of the First Office Action, the Examiner concluded that one having ordinary skill in the art would have considered the claimed invention to be obvious in view of Brown and Klots. This rejection is respectfully traversed.

The following comments were previously presented on page 7 of the Second Amendment dated September 22, 2010:

Notably, the Honorable Board did not give the term "estimated SLA breach value" any patentable weight. In so doing, the Honorable Board found that the previously claimed "a further communicative coupling to a user interface through which an SLA breach value estimate is proposed" is identically disclosed by "a cable for a computer keyboard or mouse." In view of these findings, Applicants have presented new independent claims that positively recite the claimed "estimated SLA breach value." Importantly, Applicants note that the Honorable Board made or endorsed no findings that the applied prior art identically discloses the claimed "estimated SLA breach value." On

1 this basis, Applicants maintain that the applied prior art fails to teach the limitations now
2 presented in claims 24-38.
3

4 On page 10 of the Third Office Action, the Examiner asserted "Applicant's arguments
5 with respect to the claims have been considered but are moot in view of the new ground(s) of
6 rejection." In this regard, the Examiner is referred to M.P.E.P. § 707.07(f), entitled "Answer All
7 Material Traversed," which clearly states that upon Applicants traversing the Examiner's
8 rejection, "the examiner should, if he or she repeats the rejection, take note of the applicant's
9 argument and answer the substance of it." Moreover, M.P.E.P. § 707.07(f) also states that even
10 if the arguments are moot in view of the new ground(s) of rejection, the "examiner must,
11 however, address any arguments presented by the applicant which are still relevant to any
12 references being applied" (emphasis added).
13

14 In this instance, Appellants argued that Betge-Brezetz fails to teach the limitations at
15 issue. Although the Examiner presented a new primary reference of Nagasawa, the Examiner
16 still relies upon Betge-Brezetz to teach the limitations at issue (i.e., "estimated SLA breach
17 value"). Therefore, the Examiner is required to answer the substance of Applicants' arguments,
18 and thus, the Examiner has failed to follow the specific directions of the M.P.E.P. in this matter.
19

20 Newly added claims 40, 42 and 44 recite "the estimated SLA breach value is a predicted
21 value by which a predetermined compliance percentage can be achieved by employing the
22 estimated SLA breach value with a service level agreement associated with the resource."
23 Applicants' position is that the applied prior art, either alone or in combination, also fails to teach
24 these particular limitations.

1
2 For the above-described reasons, the Examiner has failed to establish that the claimed
3 invention would have been obvious within the meaning of 35 U.S.C. § 103. Applicants, therefore,
4 respectfully solicit withdrawal of the imposed rejection of the claims under 35 U.S.C. § 103 for
5 obviousness based upon Nagasawa and Betge-Brezetz.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

Additionally Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 090461, and please credit any excess fees to such deposit account.

Date: March 31, 2011

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
Registration No. 42,984
CUSTOMER NUMBER 52023